

EXHIBIT 6

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Richard Markowitz - April 8, 2021

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 18-MD-2865 (LAK)

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IN RE:)
)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
)
This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
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C O N F I D E N T I A L
S U B J E C T T O T H E P R O T E C T I V E O R D E R

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
RICHARD MARKOWITZ
DATE: April 8, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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| <p style="text-align: right;">Page 154</p> <p>1 Q All right. And do you know what 2 the standard settlement date was in Denmark 3 for Danish securities at the time?</p> <p>4 A I don't recall. It was trade date 5 plus a certain number of business days. 6 I don't exactly recall the number. 7 Q Okay. I'll represent to you that 8 at the time it was "T plus 3." 9 And do you understand "T plus 3" to 10 mean that the settlement date is three days 11 past the trade date? 12 A Three business days, correct. 13 Q Yes. I was about to say that 14 excludes weekends or holidays. 15 Correct? 16 A Yes. 17 Q Okay. So I'll represent to you 18 that there was a two-day weekend between 19 those two dates, which would make it a 20 "T plus 4" settlement. 21 Were you aware that the pension 22 plan was purchasing Danish securities with a 23 "T plus 4" settlement date? 24 A Assuming there were no other 25 holidays other than the weekend you've</p> | <p style="text-align: right;">Page 155</p> <p>1 described, then this would be "T plus 4." 2 Q Okay. Were you aware that the 3 settlement date used in the transaction at 4 the time was a day beyond the normal 5 settlement date? 6 MR. BONGIORNO: Objection. 7 A Again, I don't agree with your 8 premise. I was aware that it was a 9 "T plus 4" settlement. 10 Q Okay. Were you aware that the 11 standard in Denmark at the time was 12 "T plus 3?" 13 A The standard for exchange 14 transactions done on the exchange, or 15 over-the-counter transactions? 16 Q Is there a separate standard 17 settlement date for over-the-counter 18 transactions? 19 MR. BONGIORNO: Objection. 20 A Settlement date is whenever the 21 parties agree, and if the exchange is one of 22 the parties, they say what it is. If it's 23 between two counterparties, the settlement 24 date could be "T plus zero" up to 25 "T plus 110."</p> |
| <p style="text-align: right;">Page 156</p> <p>1 Q Did you understand that the 2 standard exchange settlement date in Denmark 3 at the time was "T plus 3?" 4 A I don't know if I knew of those 5 particulars at the time. 6 Q But were you aware at the time that 7 part of the strategy was that the settlement 8 for the purchase of the shares would happen 9 one day past the exchange -- the standard 10 settlement date on the exchange? 11 MR. BONGIORNO: Objection. 12 A All I was aware of was -- again, 13 taking your word for it -- that in this case, 14 that trades settled four business days later 15 than the trade date. 16 Q Okay. And your understanding is 17 that that was a negotiated term. 18 Is that right? 19 A Yes. 20 Q Okay. Why did the pension plan 21 negotiate that term, Mr. Markowitz, 22 "T plus 4?" 23 A (Witness reviewing.) 24 More is better to come up with the 25 cash required.</p> | <p style="text-align: right;">Page 157</p> <p>1 Q That was your understanding, that 2 the plan negotiated because more was better 3 to get the cash required? 4 A Yes. In my experience, the more 5 days you have to settle the trade, the better 6 it is for the party obligated to pay. 7 Q Okay. And what was your 8 understanding as to why the seller of the 9 shares in this case would be willing to give 10 you more time to buy the shares than is the 11 standard settlement time in the country? 12 A Part of the negotiation on the 13 price at which the transaction would be done. 14 Q Wasn't the transaction 15 negotiated -- wasn't the price negotiated to 16 just be end-of-day market price? 17 A As I explained earlier, the seller 18 and the market pricing allocates a certain 19 amount of the profit of a dividend arbitrage 20 transaction to the other counterparties in 21 the deal, including the seller. So accepting 22 a certain share, or pricing and market terms, 23 they would have agreed to this "T plus 4." 24 Q Who undertook this negotiation with 25 the seller on behalf of the Michelle plan?</p> |

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| <p>1 A Back in April of 2012, following 2 the e-mail you mentioned, we had a call with 3 Solo in which we learned that they were 4 becoming a custodian, and terms of trades and 5 liquidity in the market and pricing in the 6 market was explained to us at that time. 7 And that included a share between 8 the seller and the buyer. 9 Q Okay. Were you part of that 10 discussion that you just described happened 11 with Mr. Shah? 12 A Yes. 13 Q Where did that take place? 14 A A telephone discussion. 15 Q Okay. Who was a participant? 16 A I was on the call, one or more of 17 my partners may have been on the call, and 18 representatives of Solo Capital were on the 19 call. 20 Q Okay. And during that call, the 21 Solo people said that they were becoming a 22 custodian? 23 A That they had become a custodian. 24 Q Okay. And so we saw a bunch of 25 e-mails earlier where they were trying to get</p> | <p>1 other financial institutions to serve as 2 custodian. 3 Did they not get any that would 4 serve in that role? 5 A I don't know. 6 Q Okay. But it turned out that when 7 the dividend arbitrage trading began with 8 Denmark, it was going to be Solo Capital who 9 was the custodian for the trading? 10 A The discussions we had with Solo 11 initially were that the trading would be in 12 Belgium and those were the trades we did 13 initially. 14 Q Okay. And for the Belgian trades 15 initially, Solo Capital was going to be the 16 custodian? 17 A Yes. 18 Q And then, as we see in August of 19 2012, this plan started trading in Denmark. 20 Was Solo Capital -- 21 A Yes. 22 Q Was Solo Capital the custodian as 23 well? 24 A Yes. 25 Q Okay. So tell me,</p> |
| <p style="text-align: center;">Page 160</p> <p>1 what -- withdrawn. 2 What did the Solo folks tell you on 3 that phone call about how the trading would 4 work and the counterparties? 5 A They said that Solo had worked to 6 get approvals from the British regulators to 7 become a custodian, that they had hired legal 8 and compliance staff, securities finance 9 people, and that with customers who became 10 clients of Solo as a custodian, they would be 11 able to purchase shares from -- through 12 brokers, from the market, for other sellers 13 of the shares, and hedge those transactions 14 through their accounts at Solo for futures 15 contracts and, if needed, lend shares to a 16 borrower who would post collateral pursuant 17 to a standard stock lending agreement. 18 Q Okay. You mentioned earlier 19 that -- something about that there would be 20 negotiations with the sellers of the shares 21 about terms such as price and settlement 22 date. 23 What did they tell you on that 24 phone call about that? 25 A That the pricing -- market pricing</p> | <p style="text-align: center;">Page 161</p> <p>1 would be a 50-50 split between the buyers and 2 the sellers, and that the customer of Solo, 3 our customer, on the long side, the purchaser 4 of shares, would pay the normal 34 percent of 5 its profit to Solo, as we did when they were 6 acting as the investment manager. 7 Q Okay. How was the 50-50 split 8 between the buyer and seller going to work? 9 How did they accomplish that? 10 A From our earliest days of the 11 Broadgate Fund, in cases where you had to 12 file for a refund, we insisted that other 13 participants in the deal accept their profit 14 in the trade on a contingent basis, so that, 15 ordinarily, the pricing would be reflected in 16 the price you sold shares for in the hedging 17 of the transaction. 18 But starting with the Broadgate 19 Fund and Merrill Lynch, and the 20 counterparties that Merrill Lynch involved, 21 we wanted to have the other participants 22 receive their profit on a contingent basis. 23 So that's where, whether it was 75/25, 60/40, 24 or 50/50, when the transactions were 25 completed and you tallied up the pluses and</p> |

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| <p>1 get its money, the profit -- the 50 percent 2 profit that is earned from this strategy? 3 A I don't know. 4 Q From whom is the seller going to 5 get that money? 6 A Based on our experience from the 7 Broadgate Fund, it would be up to the 8 arrangers of the trade, the other 9 participants in the trade, to compensate 10 those other counterparties. And we were not 11 privy to those discussions. We're not party 12 to those discussions. 13 And as I said, we left it to Solo 14 to decide when and if and how they would pay 15 those other counterparties who were 16 participating in the trades. 17 Q Okay. So Solo was the arranger in 18 this trade? 19 A Yes, arranger and custodian. They 20 had a lot of responsibilities in order to 21 allow and facilitate the trades on behalf of 22 various counterparties. 23 Q Okay. And the "T plus 4" 24 settlement date, who was responsible for 25 negotiating that with the seller?</p> | <p>1 A I don't recall. No, let me take 2 that back. I'm sorry. 3 The pension plan would ask 4 for -- ask brokers if there was liquidity in 5 the market to buy shares on the following 6 terms. Terms included closing price, market 7 price, trade date, settlement date. 8 And so, those terms were given to 9 the broker, and if the broker could fill 10 those trades at those terms, the transaction 11 would move forward. 12 So I assume the pension plan giving 13 instructions and requests for liquidity from 14 brokers would start that process. 15 Q And was that use of brokers going 16 into the market to execute on behalf of a 17 client, was that a typical process from your 18 experience in the financial industry? 19 A I'm sorry. You faded out towards 20 the end of that question. 21 If you could repeat it? 22 Q Yeah. Was the use of brokers to go 23 into the market to try to execute a trade on 24 behalf of a client, was that a typical 25 process in your experience in the financial</p> |
| <p style="text-align: center;">Page 168</p> <p>1 industry? 2 A Among two institutions who wanted 3 to effect trades, the use of an inter-dealer 4 broker or an institutional dealer broker, 5 yes, that was common. 6 Q Okay. An inter-dealer broker in 7 the market, what they do is, one institution 8 calls and says "we want to buy a certain 9 amount of a certain share at a certain 10 price," and then they go into the market and 11 see if they can meet that request. 12 Right? 13 A I don't know specifically how they 14 work. I assume they would call up other 15 customers who might be willing sellers of 16 that share, of that security, and are 17 matching a buyer with a seller. 18 Q And in this case, when you said 19 that the pension plan would issue 20 instructions to the broker for what trade it 21 wanted to do, you're talking about what 22 share, what price, and what volume. 23 Correct? 24 A And the settlement terms. 25 Q Meaning what? Meaning just the</p> | <p style="text-align: center;">Page 169</p> <p>1 "T plus 4" or the "T plus 3?" 2 Is that what you mean? 3 A Yes. 4 MR. BONGIORNO: Objection. 5 Q When you instructed the broker to 6 seek someone in the market for that trade, 7 did you put in the instructions that one of 8 the terms is a 50/50 split on the overall 9 profit from the dividend arbitrage strategy? 10 A No. 11 Q Wasn't that a key term in getting 12 this deal executed? 13 A I assume that you -- the broker was 14 aware of that in terms of being offered that 15 to a potential seller, that Solo was aware of 16 that. And if the sellers and the brokers 17 were customers of Solo, Solo would make that 18 aware to them. 19 And again, we allowed or left all 20 of that to Solo. And if there was a seller 21 who didn't demand 50 percent, may have 22 demanded zero or 10 percent, that was up to 23 Solo and the brokers to figure that one out. 24 We were not party to those discussions. 25 We knew what we would be -- our</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 percentage would be, and it would be up to 2 the other counterparties to source the shares 3 from the market. That's the commissions we 4 pay a broker to do, and with knowledge, if 5 they needed it, of what additional potential 6 profit or earnings they could make on that 7 transaction.</p> <p>8 Q Okay. But -- so when you're 9 instructing the broker, you're -- it sounds 10 like you're not giving all the terms of the 11 ultimate deal with the selling counterparty. 12 Right?</p> <p>13 A We gave the terms of the trade that 14 we needed to do to execute the trade. And 15 again, the contingent profitability is in 16 every dividend arbitrage strategy we worked 17 on going back to Merrill Lynch and the 18 Broadgate Fund.</p> <p>19 It was up to the -- I will borrow 20 your term -- the arrangers to sort out how 21 they brought other counterparties to the 22 trade to make it successful and on -- comply 23 with all the legal and tax requirements 24 needed to do so.</p> <p>25 Q Okay. And here, this TDC trade on</p> | <p style="text-align: right;">Page 171</p> <p>1 behalf of the Michelle plan, that wasn't the 2 only trade that was going to be happening as 3 part of this strategy, right?</p> <p>4 Meaning, just to be clear, there 5 were going to be other plans executing very 6 similar trades in the same stock.</p> <p>7 Correct?</p> <p>8 A Yeah, dividend-paying stocks. 9 Those were -- that was the focus on the 10 strategy.</p> <p>11 Q Right. So, for example, on a day 12 where the Michelle plan was going to buy this 13 many shares of TDC, you understood that other 14 pension plans associated with you or the 15 Argre principals were also going to buy TDC 16 shares in similar volumes on the same day. 17 Right?</p> <p>18 A No. I understood that on that 19 trade date, or around that trade date, as 20 long as it was prior to the date of the 21 general annual meeting, many pension funds, 22 both here in the U.S. or Canada, around the 23 world, people who had tax treaties would look 24 to trade dividend-paying stocks.</p> <p>25 Q And of those many, there were going</p> |
| <p style="text-align: right;">Page 172</p> <p>1 to be quite a few that had your name attached 2 to it or your Argre principals' names 3 attached to them. 4 Correct?</p> <p>5 MR. BONGIORNO: Objection.</p> <p>6 Q Let me withdraw it.</p> <p>7 It's very simple, Mr. Markowitz. 8 When you undertook this trade on behalf of 9 the Michelle plan on August 8, 2012, you 10 understood that other pension plans 11 associated with the Argre principals were 12 also going to purchase TDC shares in similar 13 amounts on the same trade date. 14 Correct?</p> <p>15 A Other pension plans were customers 16 of Solo, were focused and interested in a 17 dividend arbitrage trades on the terms that 18 we understood them, and I don't know about 19 your comment on the amounts, if they were 20 similar or different. I don't know that. 21 Each of the customers would be 22 trading an amount that was consistent with 23 their own investment needs and/or the 24 liquidity in the marketplace.</p> <p>25 Q And how did you understand the</p> | <p style="text-align: right;">Page 173</p> <p>1 brokers were going to go find the liquidity 2 for these trades in the marketplace?</p> <p>3 A From sellers of shares. 4 Q Okay. Where did you expect they 5 were going to find these sellers?</p> <p>6 A In all the dividend arbitrage 7 strategies we had looked at and participated 8 in, that was up to the brokers to find that 9 liquidity, given the economics of the trade 10 and the advantage of dividend arbitrage. 11 As I said, profitability could be 12 shared. The sellers could have been other 13 investors who were not entitled to the tax 14 benefits. They could have been short 15 sellers, long sellers. 16 So the source of the stock was up 17 to the brokers and the sellers to obtain 18 based on market liquidity.</p> <p>19 Q Okay. And was it your 20 understanding that the sellers in each case 21 would be executing on the Solo platform?</p> <p>22 A We were informed by Solo that other 23 counterparty to the trade would likely be 24 customers of Solo as well.</p> <p>25 Q Okay. And is that -- that's true</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 how those fees would be parceled out. But it 2 was part of the overall construction of the 3 trade.</p> <p>4 Q Okay. Other than facilitating 5 getting the money to the right places, did 6 Ganymede, the entity, provide services to the 7 pension plans?</p> <p>8 A I viewed Ganymede and Solo and 9 Sanjay Shah as one entity. So yes, in my 10 belief, there were significant services 11 provided in developing and becoming a 12 custodian at Solo Capital, and hiring all the 13 staff necessary to allow the custodian to 14 function, and to allow our pension plans or 15 other pension plans to execute these trades.</p> <p>16 Q Okay. So you viewed Solo Capital 17 and Ganymede as interchangeable?</p> <p>18 A Yes.</p> <p>19 Q Okay. And do you -- did you have 20 an understanding as to why you got an 21 instruction from Mr. Shah to use the Ganymede 22 entity on certain occasions as opposed to the 23 Solo Capital entity?</p> <p>24 A No.</p> <p>25 Q Okay. Solo Capital had operations</p> | <p style="text-align: right;">Page 203</p> <p>1 in what locations, as far as you knew?</p> <p>2 A We visited their offices in London. 3 I don't know if they had legal offices 4 elsewhere in the world.</p> <p>5 Q Do you know if they had offices in 6 Dubai?</p> <p>7 A I don't know for sure.</p> <p>8 Q Okay. And where did -- do you know 9 where Ganymede was located?</p> <p>10 A I don't recall exactly.</p> <p>11 Q Can you turn to the document marked 12 Exhibit 2124?</p> <p>13 MR. WEINSTEIN: Mark this as 2124. 14 (Whereupon the above mentioned was 15 marked for Identification.)</p> <p>16 A (Witness reviewing.)</p> <p>17 Q This is a document that's titled 18 "Tax Reclaim Advisory Services Agreement 19 Between Ganymede Cayman Limited and Michelle 20 Investments Pension Plan Trust." 21 Are you familiar with this 22 document?</p> <p>23 A Yes.</p> <p>24 Q Okay. And did you -- on behalf of 25 Michelle plan, did you execute it?</p> |
| <p style="text-align: right;">Page 204</p> <p>1 A Yes.</p> <p>2 Q Given that the title of the 3 Ganymede entity is "Ganymede Cayman Limited," 4 do you know -- does that refresh your 5 recollection as to where Ganymede was 6 located?</p> <p>7 A Yes.</p> <p>8 Q Okay. Was it in the Cayman 9 Islands?</p> <p>10 A Yes.</p> <p>11 Q Did you ever get to visit?</p> <p>12 A Unfortunately not.</p> <p>13 Q Yeah, okay. It says "Dated" on the 14 first page, but it doesn't have a date. 15 Then, on the last page, there's a schedule 16 which says, "This schedule is accurate as of 17 19th of October, 2012."</p> <p>18 Do you believe that's approximately 19 the time that you would have executed the 20 agreement?</p> <p>21 A (Witness reviewing.)</p> <p>22 I don't know.</p> <p>23 Q Did Mr. Shah instruct you to enter 24 into this agreement with Ganymede?</p> <p>25 A Sorry. Did Mr. Shah do what?</p> | <p style="text-align: right;">Page 205</p> <p>1 Q Instruct you to enter into this 2 agreement with Ganymede?</p> <p>3 A He requested that we enter into 4 this agreement.</p> <p>5 Q Okay. Did you have any discussions 6 with him about that?</p> <p>7 A The discussions predate this date 8 to what I explained earlier about our 9 understanding of how the pension plan would 10 participate in these investments, earn its 11 return, have to share the profitability with 12 other parties in the transaction, and that 13 as -- similar to the transaction with Merrill 14 Lynch, we would pay away everything that we 15 were not entitled to to Solo or Sanjay or 16 Ganymede, what entity they designated, and 17 pay that away and let them distribute those 18 funds as they believed were necessary.</p> <p>19 Q In the deal with Merrill Lynch, did 20 Merrill Lynch ask you to enter into an 21 advisory services agreement with an entity in 22 the Cayman Islands that you never heard of?</p> <p>23 A I don't remember.</p> <p>24 Q Is it fair to say unlikely, as you 25 sit here today, that that happened?</p> |

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| <p style="text-align: right;">Page 214</p> <p>1 that -- when Michelle purchased the TDC 2 shares in August of 2012?</p> <p>3 A That was my understanding of the 4 terms of the economics to the pension plan 5 and the other counterparties in the trades.</p> <p>6 Q Okay. So why isn't that term 7 reflected in this agreement, that you're 8 going to pay Ganymede 66.67 percent, but that 9 part of that has to go to the seller because 10 the seller gets 50 percent of the profit?</p> <p>11 Why was that term not in this 12 agreement?</p> <p>13 MR. BONGIORNO: Objection.</p> <p>14 A I don't know the answer to that 15 question other than in many business 16 transactions I've worked on, including ones 17 with hundreds of pages of documents, some 18 agreements are discussed and then embodied in 19 percentages, but the parties agree to what 20 the terms are.</p> <p>21 And in every dividend arbitrage 22 transaction we looked at, no matter who the 23 participants were, the most important term 24 was the trading level. And therefore, that 25 was agreed up front with Solo what the</p> | <p style="text-align: right;">Page 215</p> <p>1 trading level would be.</p> <p>2 Q And by "trading level," you mean 3 how much the seller gets of the profit of the 4 whole strategy?</p> <p>5 A Yes.</p> <p>6 Q All right. And why was the most -- 7 in your words, why was the most significant 8 term to that deal not reflected in a contract 9 like the one we see here?</p> <p>10 A It is reflected. It's embodied in 11 that percentage.</p> <p>12 Q Okay.</p> <p>13 A And if I might add, from the 14 pension plan's perspective, what it is 15 concerned about is how much profitability it 16 can retain from a dividend arbitrage or 17 structured investment transaction. And how 18 the money that it isn't retaining is paid or 19 not or spent is not the concern of the 20 investor, from my experience.</p> <p>21 Q Prior to entering into the Danish 22 transactions, did you have any understanding 23 from Sanjay Shah about what you could expect 24 to earn for each pension plan that 25 participated?</p> |
| <p style="text-align: right;">Page 216</p> <p>1 A We were supplied with trading 2 information on names of companies that paid 3 dividends, not just in Denmark, but Belgium, 4 and we were able to confirm the amounts of 5 the dividend, the various dates associated 6 with those dividend payments, and we would 7 ask for information from any investment 8 manager or prime broker what liquidity they 9 might be able to achieve in the marketplace.</p> <p>10 And it is likely that we received 11 indications of that from Solo Capital.</p> <p>12 Q Did Solo Capital give you any 13 indication of a certain amount of money that 14 you could expect to earn for every pension 15 plan that participated?</p> <p>16 A I don't recall if they said this 17 pension plan would earn this or not. They 18 gave us a sense of the size of the market in 19 terms of liquidity and shares that they 20 thought would be available and subject to 21 other constraints, and the number of plans 22 that we could have as customers of Solo that 23 would mathematically lead to estimates of 24 profits.</p> <p>25 Q What estimates of profits did it</p> | <p style="text-align: right;">Page 217</p> <p>1 lead to?</p> <p>2 A I don't recall.</p> <p>3 Q Do you recall whether the estimates 4 of profits were in the thousands, hundreds of 5 thousands, millions?</p> <p>6 MR. BONGIORNO: Objection.</p> <p>7 A They were in the millions.</p> <p>8 Q Was that with respect to each 9 particular plan that would be involved, or 10 was that on an aggregate basis?</p> <p>11 MR. BONGIORNO: Objection.</p> <p>12 A I suspect we looked at it in the 13 aggregate, but knew that at the end of the 14 day there would be different customers 15 earning different amounts based on the 16 volumes that they invested in, the shares 17 they owned, and the trading.</p> <p>18 Q So when you said you think the 19 estimate was in the millions, were you 20 talking on an aggregate basis?</p> <p>21 A Yes.</p> <p>22 Q Okay. Are you -- by "millions," do 23 you mean several million, or tens of 24 millions, or can you define it any more 25 precisely?</p> |

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| <p>1 Q Okay. Can you turn, please, to 2 Exhibit 2142?</p> <p>3 MR. WEINSTEIN: Mark this as 2142. 4 (Whereupon the above mentioned was 5 marked for Identification.)</p> <p>6 A (Witness reviewing.)</p> <p>7 Q Do you see it's an e-mail 8 originally from Solo Capital to, you know, 9 its clients that there's a change in the 10 custody agreement with an increase to the 11 minimum cash balance to 500,000 Euros?</p> <p>12 A Yes.</p> <p>13 Q Okay. Do you know if that new 14 margin requirement applied to the plans that 15 you were associated with?</p> <p>16 A I assume it applied to all clients 17 at that time, as of August 1, 2014.</p> <p>18 Q Did the plans that you were 19 associated with comply with that new margin 20 requirement?</p> <p>21 A The plans that we previously had 22 been talking about stopped trading with Solo 23 at that point in time.</p> <p>24 Q Okay. So there was still trading 25 going on, but Solo was not the custodian?</p> | <p>1 A I'm sorry. Can you repeat that?</p> <p>2 Q Sure. There was still trading 3 going on, but Solo was not the custodian?</p> <p>4 A No.</p> <p>5 Q Okay. So, in July 2014, were any 6 plans that you were associated with trading 7 in Danish securities using Solo as custodian?</p> <p>8 A No.</p> <p>9 Q In July 2014, were any plans you 10 were associated with trading in Danish 11 securities with some other entity as 12 custodian?</p> <p>13 A No.</p> <p>14 Q So there was no Danish trading 15 going on during this period of time?</p> <p>16 A During the time you said, yes.</p> <p>17 Q Okay. And was there any Danish 18 trading going on with any of your plans in a 19 time where they used Solo as the custodian 20 and during a time period in which the minimum 21 cash balance was 500,000 Euros?</p> <p>22 A No.</p> <p>23 Q Okay. As part of the Danish 24 securities trading, did the plans onboard 25 with various securities brokers?</p> |
| <p style="text-align: center;">Page 268</p> <p>1 A Yes.</p> <p>2 Q Do you recall which brokers were 3 used for Danish trading?</p> <p>4 A One was the e-mail we were 5 previously looking at, FGC Securities.</p> <p>6 Q Okay.</p> <p>7 A I recall another name, Novus 8 Capital, and there were probably one, two, or 9 three more that I don't recall their names at 10 this point.</p> <p>11 Q Okay. Were you familiar with Novus 12 Capital prior to doing trading with Solo 13 Capital?</p> <p>14 A No.</p> <p>15 Q Who introduced Novus as a broker?</p> <p>16 A Solo.</p> <p>17 Q Did you perform any due diligence 18 on Novus other than to obtain DML or Patriot 19 Act certificates?</p> <p>20 A No. It wouldn't have been our -- 21 it wouldn't have been something we would have 22 done to deal with a broker that was 23 intermediating trades for us.</p> <p>24 Q Prior to using any brokers for the 25 purposes of this Danish trading, were you</p> | <p style="text-align: center;">Page 269</p> <p>1 familiar with any of them that acted in that 2 role?</p> <p>3 A Yes.</p> <p>4 Q Which ones were you familiar with 5 prior to dealing with Solo?</p> <p>6 A We had met one or two when we made 7 our first due diligence trip to London in 8 2010. In addition to meeting Merrill Lynch 9 and Acupay, we met one or more institutional 10 dealer -- institutional brokers.</p> <p>11 And the names I don't recall at 12 this point, but we met at least two of them 13 at that trip.</p> <p>14 Q Did you end up using those one or 15 two institutional brokers as part of the 16 Danish trading?</p> <p>17 A I don't recall.</p> <p>18 Q Okay. Had you been familiar with 19 FGC Securities before dealing with Solo?</p> <p>20 A No.</p> <p>21 Q Who introduced FGC Securities as a 22 broker?</p> <p>23 A Solo.</p> <p>24 Q Can you turn, please, to Exhibit 25 2143?</p> |

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| <p>1 reports that Solo asked him "to onboard with 2 three new brokers yesterday," and then he 3 identifies those three.</p> <p>4 Do you have any understanding why 5 Solo asked to have the plans onboarded with 6 three new brokers?</p> <p>7 A No.</p> <p>8 Q Had you ever heard of Bastion 9 Capital, Mako Financial or the TJM 10 Partnership prior to Mr. LaRosa introducing 11 them through this e-mail?</p> <p>12 A No.</p> <p>13 Q As far as you understood, was it 14 Solo that introduced those brokers into the 15 mix?</p> <p>16 A Solo asked Mr. LaRosa to onboard 17 with those three new brokers.</p> <p>18 Q Okay. Do you know if the plans 19 ever used any of these three brokers in 20 connection with trading of Danish securities?</p> <p>21 A I think so, yes.</p> <p>22 Q Okay. Whose job was it on behalf 23 of the plans to decide which broker to go to 24 to seek liquidity for any particular trade?</p> <p>25 A It's part of the allocation process</p> | <p>1 that we received from Solo in terms of the 2 liquidity and shares. We'd also be given 3 information as to which of those brokers 4 would source that liquidity or had access to 5 that liquidity.</p> <p>6 So Solo would provide us a number 7 of shares that they saw in the marketplace or 8 could arrange in the marketplace, and also 9 the identity of the brokers who would be able 10 to handle the trades on behalf of the pension 11 plans.</p> <p>12 Q So prior to the plans entering into 13 the purchase of the securities, the plan 14 would receive information from Solo about 15 which brokers to reach out to to fill 16 certain, you know, liquidity for any 17 particular stock.</p> <p>18 Is that right?</p> <p>19 A Yes.</p> <p>20 Q If you look at the Michelle plan's 21 purchase of TDC shares in August of 2012, did 22 the various plans that were set up in 2012 23 trade in other Danish stocks in 2012?</p> <p>24 A Yes.</p> <p>25 Q And did the trades follow the same</p> |
| <p style="text-align: center;">Page 276</p> <p>1 patterns as what we saw with the TDC 2 purchase, meaning a purchase, a stock loan, 3 and a hedge?</p> <p>4 A In order, a purchase, a hedge, a 5 receipt of dividend, and a stock loan.</p> <p>6 Q Okay. Do you know how many plans 7 that you were associated with traded in 8 Danish securities in 2012?</p> <p>9 A Approximately six.</p> <p>10 Q Okay. As part of the transactions 11 you just described, one of the ones you 12 mentioned was the receipt of the dividend.</p> <p>13 How did the pension plan receive 14 the dividend in connection with the shares 15 that it purchased?</p> <p>16 A Received it into its custodial 17 account at Solo Capital.</p> <p>18 Q Do you know who sent -- well, 19 withdrawn.</p> <p>20 From where did the dividend come 21 that came into the custodial account of the 22 plan?</p> <p>23 MR. BONGIORNO: Objection.</p> <p>24 A Can you repeat the question, 25 please?</p> | <p style="text-align: center;">Page 277</p> <p>1 Q Sure. Where did the dividend come 2 from that would be credited to the plan's 3 custodial account?</p> <p>4 A In our experience, learning about 5 dividend arbitrage trading, it either came 6 directly from the company paying the dividend 7 or, if that payment got redirected somewhere 8 else by mistake, or by not having proper 9 records, at the central security depository, 10 then the seller of the shares would have to 11 make a payment and they would receive the 12 dividend directly.</p> <p>13 Q Okay. In connection with the 14 purchase of Danish securities that was done 15 on behalf of these pension plans, do you 16 know, typically, did the dividend that was 17 received come directly from the issuer 18 company?</p> <p>19 A Again, as I said, we're talking 20 about the theoretical, that's how the 21 payments were made. Money into our account 22 is money, and it was a dividend payment.</p> <p>23 And I have -- don't have any idea 24 as to the routing or origin of that payment, 25 but it was a dividend payable by the company.</p> |

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO. 18-MD-2865 (LAK)

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IN RE:)
)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
)
This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
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C O N F I D E N T I A L
S U B J E C T T O T H E P R O T E C T I V E O R D E R

CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER
ORAL EXAMINATION OF
RICHARD MARKOWITZ
VOLUME II
DATE: April 9, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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Richard Markowitz - April 9, 2021

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| <p>1 A We received advice that explained 2 the issues surrounding that related to a 3 different jurisdiction in Denmark, and that 4 it created additional tax risk for the 5 pension plans.</p> <p>6 Q Okay. Can you turn, please, to 7 Exhibit 1829?</p> <p>8 MR. BONGIORNO: Day 1, Volume 1.</p> <p>9 Q This e-mail from you is about 10 Danish reclaim payments received from Syntax. 11 Is that right?</p> <p>12 A Yes.</p> <p>13 Q And you say in the e-mail that "the 14 amounts on the spreadsheet were sent to each 15 plan's respective custodian, and then 16 75 percent of the gross reclaim was paid out 17 to Ganymede."</p> <p>18 And in 2015, why was 75 percent of 19 the gross reclaim paid out to Ganymede?</p> <p>20 A In late 2014, after the partners of 21 Argre decided not to work together, we 22 weren't sure we would be able to continue 23 doing business with Solo Capital or its 24 related entities.</p> <p>25 And as I mentioned, two of my</p> | <p>1 former partners, Mr. Stein and Mr. Lhote, had 2 decided to go off and do business on their 3 own. And they had acquired North Channel 4 Bank, got authorizations to have it act as a 5 custodian, had decided to work with former 6 employees of Solo, and were going to be 7 effectively competing in this dividend 8 arbitrage marketplace.</p> <p>9 So with respect to Solo Capital, 10 where Mr. Van Merkenstein and myself, and 11 ultimately Mr. Klugman, preferred to continue 12 our relationship and client business, we had 13 discussions that initially were tense because 14 Mr. Shah thought that Mr. Van Merkenstein 15 and myself were investors in the bank, aware 16 of the developments, were going to be 17 competing.</p> <p>18 And we assured them that that was 19 farthest from the truth. We had no 20 relationship with that, we're not aware of 21 it, or became aware of it at the time that 22 Argre Management effectively dissolved.</p> <p>23 And Mr. Shah said that he would 24 consider allowing us to participate as 25 customers and clients with different</p> |
| <p style="text-align: center;">Page 453</p> <p>1 entities, those that were no longer 2 affiliated with or related to Mr. Stein 3 and -- Mr. Stein and Mr. Lhote, and the 4 economics would most likely change because 5 there would be additional competitors in the 6 marketplace, North Channel Bank, the ability 7 to get liquidity in shares would be impacted, 8 and that we would be -- the pension plans 9 would be receiving a lower percentage based 10 on the market pricing and the fees paid to 11 the other counterparties.</p> <p>12 And that became 66 percent to 13 75 percent that would be paid away by the 14 pension plans because of this market 15 development, and perhaps Mr. Shah being upset 16 and associating Mr. Van Merkenstein and 17 myself with the actions of my former 18 partners.</p> <p>19 Q So, in this particular case, adding 20 competitors into the market actually drove up 21 the fee as opposed to the additional 22 competitors usually driving a fee down?</p> <p>23 A No. Additional competitors in the 24 marketplace drive up the cost of borrowing 25 shares if it's a stock lending transaction,</p> | <p style="text-align: center;">Page 454</p> <p>1 or more people competing for the same 2 potential sellers of shares, whether they're 3 sourcing them through short sales or not. 4 So you have the same number of 5 shares in the marketplace, fixed by shares 6 outstanding or those willing to participate 7 as sellers in the transaction, same number of 8 shares, now another competitor looking to 9 acquire those shares for a structured trade. 10 And if I'm the party supplying 11 those shares, I'm happy, because I'm going to 12 charge more money, because there's two more 13 parties -- another party competing for my 14 limited resource.</p> <p>15 Q Okay. Would you expect that that 16 price impact would also impact the former 17 Argre people who were now working through 18 North Channel Bank?</p> <p>19 A I assume so, yes.</p> <p>20 Q Okay. But you don't know if that 21 was the case?</p> <p>22 A I don't know.</p> <p>23 Q After this change where 75 percent 24 would be paid to Ganymede, were there new 25 services agreements between the pension plans</p> |

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| <p>1 Q You understand that Sanjay Shah has 2 been criminally charged for his role in the 3 dividend arbitrage strategy?</p> <p>4 A I'm not aware of the details of the 5 charges or what the equivalent terminology is 6 in Denmark.</p> <p>7 Q You understand he has been charged, 8 but you don't know the details?</p> <p>9 A Again, I just -- whatever I've read 10 in the press is all I know. So I have not 11 been instructed on it or told about it or 12 given any details, no.</p> <p>13 Q Okay. Have you had any 14 conversations with Mr. Shah since he was 15 charged?</p> <p>16 A No.</p> <p>17 Q Can you turn to Exhibit 2244?</p> <p>18 MR. WEINSTEIN: Mark this as 2244. 19 (Whereupon the above mentioned was 20 marked for Identification.)</p> <p>21 A Can you tell us what book that's 22 in?</p> <p>23 MR. BONGIORNO: I think it's in 24 today's book.</p> <p>25 A (Witness reviewing.)</p> | <p>1 Q Exhibit 2244 is an e-mail from 2 Mr. Ben-Jacob to you and others in which he 3 attaches Kaye Scholer's finalized memorandum 4 discussing disqualified person issues as they 5 relate to the Michelle structure.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Okay. And on Page 3, towards the 9 top of the page, it says that "we understand 10 that Solo provided the entire structure of 11 the trading strategy to the trustee."</p> <p>12 Was that correct?</p> <p>13 A I'm sorry. Which page?</p> <p>14 Q Page 3.</p> <p>15 A (Witness reviewing.)</p> <p>16 Yes.</p> <p>17 Q Okay. If you turn to Page 5, the 18 first full paragraph, the second sentence 19 says, "The documents for the transaction 20 indicate that of the gross amount payable to 21 the Michelle plan, the Michelle plan retained 22 approximately 34 percent and the remaining 23 66 percent was paid to Solo."</p> <p>24 Correct?</p> <p>25 A Yes.</p> |
| <p style="text-align: center;">Page 549</p> <p>1 Q You told us earlier today that at 2 some point in 2014 or early '15, the amount 3 paid to Solo increased to 75 percent. 4 Is that right?</p> <p>5 A Yes.</p> <p>6 Q Did you go back to Kaye Scholer and 7 ask whether any advice that they had provided 8 changed or would remain the same in light of 9 that new fee structure?</p> <p>10 A They were aware of the new fee 11 structure and never advised us that we would 12 need to update or receive an additional 13 memorandum.</p> <p>14 Q Okay. So you didn't receive any 15 analysis from Kaye Scholer in light of the 16 new fee structure?</p> <p>17 A We didn't receive any written 18 information from Kaye Scholer. And the fee 19 schedule was disclosed and made aware to 20 Kaye Scholer.</p> <p>21 And if they had a concern about it, 22 including needing to revisit this memorandum, 23 they would have instructed us and informed us 24 of that.</p> <p>25 Q Okay. It says -- after that</p> | <p style="text-align: center;">Page 550</p> <p>1 sentence, it says, "Solo was responsible for 2 paying significant costs and expenses 3 associated with the transaction, including 4 trading commissions, legal fees, brokerage 5 fees, accounting fees, tax reclaim service 6 fees, custodial service fees, leverage 7 provided fees, and guarantee fees."</p> <p>8 And did they obtain that 9 information from you and the other Argre 10 principals?</p> <p>11 A I don't recall.</p> <p>12 Q Okay. They don't list a 50 percent 13 profit share with the seller amongst the 14 costs and fees that Solo would have to pay.</p> <p>15 Do you know why that is?</p> <p>16 A No.</p> <p>17 Q The last paragraph on that page 18 says, "While the documents provide that the 19 66 percent paid to Solo is a fee to Solo, the 20 understanding of the parties at the time the 21 transaction was entered into was that Solo 22 and the Michelle plan were instead 23 effectively engaged in a partnership under 24 which the profits would be shared between 25 them under the above profit allocation, with</p> |